IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1897 OF 2006.

Anant Ramji Patil. ... Petitioner.

Versus.

Prabhakar Dattatray Mhatre and ors. ... Respondents.

Ms.Deepa S.Matwarkar i/by Shri Deepak A.Patil for the Petitioner.

Shri Sachin Punde i/by Shri R.L.Patil for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 8th February, 2007.

P.C.:

1. Heard the learned Advocate for the Petitioner and the Advocate for the 1st Respondent. Notice for final disposal was issued on 10th April 2004 and the 2nd and 3rd Respondents are duly served with the notice. None appears for them.

2. The Petitioner is the original Plaintiff whose suit for declaration, injunction and removal of encroachment has been dismissed on 5th April 2005. An appeal along with an application for condonation of delay was preferred on 13th June 2005 before the District Court. A prayer was made for condonation of delay of 15 days. According to the case of the Petitioner, the last date for filing of the Appeal was 15th June 2005.

3. The learned District Judge, in my view, has

taken a hypertechnical view of the matter. Even according to the learned Judge, the delay was only of 7 weeks. The impugned Judgment and Decree was passed in April 2005 and thereafter summer vacation of the Court intervened. The learned Judge ought to have adopted a liberal approach considering the fact that the delay was only of 7 weeks in preferring a substantive appeal against the decree. The reasons given in the Application are that for sometime the Petitioner was ill and thereafter, he was working in his paddy field. Other difficulties which are mentioned in the Application are that his Advocate's computer was not working and his Advocate met with an accident. In my view, the explanation in the Application was sufficient to condone the delay as sufficient cause was made out. Hence the petition must succeed.

4. The impugned order dated 13th October 2005 is quashed and set aside. Miscellaneous Application No.77 of 2005 is allowed. The District Court will now proceed with the Appeal in accordance with the law.

5. The Petitioner is directed to pay a costs of Rs.2500/- to the 1st Respondent within a period of six weeks from today.

Judge.